

REMARKS/ARGUMENTS

1. Amendments to the Specification

A new priority claim has been amended consistent with Examiner's comments. No new matter has been added by amendment.

2. Amendments to the Claims

Claims 1-13 remain in this application. Applicants amended claims 1-24 for various reasons as described in more detail below. Applicants added new claim 25. No new matter has been added by amendment. Applicants respectfully requests reconsideration and withdrawal of all rejections.

3. Rejections under 35 U.S.C. § 112

Examiner has rejected claims 1-13 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. More specifically, Examiner asserted that the specification does not appear to disclose how to form the filler wherein the density of the inner part is about 10 to 90% of that of the crust part or how to find or measure the density associated with the recitation.

Applicants respectfully submit that the specification does disclose how to form the filler. Applicants respectfully direct the Examiner to page 4, line 17 – page 5, line 20 of the specification. This portion of the specification details the processing involved, namely the drying technique, such as spray drying. These steps, cited on page 4, lines 22-30, create the claimed filler. Pursuant to MPEP 2164.01(b), as long as the specification discloses at least one method for making and using the claimed invention that bears a reasonable correlation to the entire scope of the claim, then the enablement requirement of 35 U.S.C. § 112 is satisfied. *In re Fisher*, 427 F.2d 833, 839, 166 USPQ 18, 24 (CCPA 1970). The cited section of the specification discloses the drying technique at page 4, lines 22 – 30.

Applicants respectfully submit that the specification need not disclose how to measure the density associated with the recitation. Pursuant to MPEP § 2164.01, a patent need not teach, and preferably omits, what is well known in the art. *In re Buchner*, 929 F.2d

660, 661, 18 USPQ2d 1331, 1332 (Fed. Cir. 1991); *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384, 231 USPQ 81, 94 (Fed. Cir. 1986), *cert. denied*, 480 U.S. 947 (1987); and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1463, 221 USPQ 481, 489 (Fed. Cir. 1984). Applicants respectfully submit that the method of measuring the density associated with the recitation is well known in the art. Applicants respectfully submit that the § 112, first paragraph rejection based on how to make and measure the recited density is no longer appropriate and should be withdrawn.

The Examiner rejected claims 1–13 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. In claim 1, Applicants have amended the claim to make the claim definite. Applicants have specified that the rotationally symmetrical shape and inner and crust parts refer to the filler. Applicants have also removed the antecedent basis for “solids.” Applicants respectfully submit that the claim is now definite.

In claims 1-11 and withdrawn claims 14-24, Applicants amended the claims to “wherein” instead of “characterized in that.” In claims 12-13, Applicants amended the claims to “including” instead of “characterized in containing.” Applicants respectfully submit that the claims are now definite.

The Examiner rejected claims 2, 4, 5, 7, and 9-11 under 35 U.S.C. § 112, second paragraph, as being indefinite due to the recitations of “preferably about” or “for example.” Applicants have amended the claims to remove the recitations. Applicants respectfully submit that the claims are now definite.

The Examiner rejected claim 8 under 35 U.S.C. § 112, second paragraph, as being indefinite due to the recitations of “a dense coat that surrounds the inner part.” Applicants have amended the claim to a “fine and flexible coat that surrounds the inner part.” Support for this amendment is found on page 5, lines 25 – 26. Applicants respectfully submit that the claim is now definite.

Applicants have amended the claims to comply with the formal rejections entered by the Examiner, not for the basis of distinguishing over the prior art. Applicants respectfully requests entry of these Amendments and allowance of the application.

4. Rejections under 35 U.S.C. § 102/103

The Examiner rejected claims 1-13 under 35 U.S.C. § 102(b) as being anticipated, or alternatively under 35 U.S.C. § 103(a) as obvious over WO 01/79606 to Gronroos ("Gronroos"). The Examiner rejected claims 12 and 13 under 35 U.S.C. § 103(a) as obvious over Gronroos in view of U.S. Published Patent Application No. 2003/0106658 to Ilmonen.

Applicants overcome Examiner's rejections by perfecting the benefit claim under 35 U.S.C. 120, within the time period set in 37 CFR 1.78(a), by amending the specification of the application to contain a specific reference to a prior application. Applicants respectfully submit that Examiner's citations of Gronroos establish that Gronroos satisfies the enablement and written description requirements of 35 U.S.C. 112, first paragraph. Applicants respectfully request withdrawal of Examiner's 102 and 103 rejections.

Applicants respectfully submit that new claim 25 is patentable over the cited references. More specifically, Examiner cites several sections of Gronroos for the recitation of claim 1 wherein the amount of filler used is 3 to 60% of the amount of solids. Applicants respectfully submit that not one of Examiner's citations disclose the cited recitation. Applicants respectfully submit that claim 25, directly dependent from independent claim 1, is patentably distinct over Gronroos based at least on the previously cited recitation in independent claim 1. Furthermore, claim 25 recites a further recitation and is allowable based on its own combination.

Applicants respectfully requests that a timely Notice of Allowance be issued in this case. If necessary, Applicants request that this response be considered a request for an extension of time appropriate for the response to be timely filed. Applicants request that any required fees needed beyond those submitted with this amendment be charged to the account of

Baker & Daniels, Deposit Account No. 02-0390.

The Examiner is invited to contact the undersigned at the telephone number provided below should any question or comment arise during reconsideration of this matter.

If any fees are necessary in connection with this document, please charge Deposit Account No. 02-0390, Baker & Daniels.

Respectfully submitted,

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